No. 83-2161

In The
Supreme Court of the United States
October Term, 1984

STATE OF MONTANA, *et al.*,
Petitioners,
vs.
BLACKFEET TRIBE OF INDIANS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF COTTON PETROLEUM CORPORATION, WINTERSHALL OIL & GAS CORPORATION, AND ROCKY MOUNTAIN OIL AND GAS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF THE BLACKFEET TRIBE OF INDIANS

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With the written consent of all parties, the amici curiae Cotton Petroleum Corporation, Wintershall Oil & Gas Corporation, and the Rocky Mountain Oil and Gas Association (RMOGA) respectfully submit this brief as amici curiae on behalf of themselves and on behalf of the members of RMOGA. Amici have filed the consent of all parties with the Clerk of the Court.

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INTEREST OF AMICI CURIAE

Cotton Petroleum Corporation is an oil and gas producer which has substantial oil and gas production throughout the West including production on the Jicarilla Indian Reservation in New Mexico. Cotton is currently subject to both Jicarilla tribal severance taxes and five New Mexico taxes imposed on oil and gas production. In an effort to free its reservation production from overlapping state and tribal taxation, Cotton Petroleum Corporation has initiated state tax refund litigation in the state courts of New Mexico. *Cotton Petroleum Corporation v. State of New Mexico, Consolidated* Nos. SF82-2081(C) and 82-2302(C), Santa Fe District Court, New Mexico.

Wintershall Oil and Gas Corporation conducts oil and gas exploration and production operations in the West and has recently acquired substantial oil and gas reserves on the Ute Mountain Ute Indian Reservation which is located

in Colorado and in New Mexico. Wintershall's Ute Mountain Ute Reservation oil and gas activities are subject to both a tribal severance tax and a broad array of Colorado and New Mexico oil and gas taxes.

RMOGA is a voluntary non-profit association whose purpose is to promote discovery, development, production and conservation of oil and gas in the Rocky Mountain region. RMOGA's 600 members are involved in all phases of the oil and gas industry and related businesses, and many of its members are engaged in oil and gas production on western Indian reservations, which production is subject to overlapping tribal and state taxation.

The present case is of special importance to the amici curiae. The companies as well as the members of RMOGA have entered into leases or joint ventures on Indian reservations which further the federal policies of making the reservations economically self-sufficient. The decision of the Ninth Circuit prohibiting the states from imposing their full array of oil and gas taxes should be upheld by the Supreme Court. The Ninth Circuit decision is consistent with recent decisions of this Court in the federal/Indian preemption area which suggest that the states can only impose their mineral production taxes when required to support specific state regulatory responsibility or state services on the Indian reservations.[1] Further, given the increasing tribal taxes now being imposed on reservation mineral production, the court of appeals ruling prevents an onerous double taxation burden from being imposed on Amici Curiae, and encourages companies such as Amici Curiae to remain on the reservations to undertake mineral production free of the fear that competing tribal and state taxing authorities will render reservation mineral activity uncompetitive.

[1]Significantly, the Ninth Circuit remanded this case to the district court to determine whether, under contemporary federal/Indian preemption cases, the Montana taxes should be imposed on producers such as Amici Curiae. *Blackfeet Tribe of Indians*, 729 F.2d 1192, 1203 (9th Cir. 1984), *cert. granted*, 53 U.S.L.W. 3235 (1984).

SUMMARY OF ARGUMENT

Amici Curiae, mineral producers on Indian reservations, submit this Brief Amici Curiae in order to alert the Court to the presence of substantial overlapping state and tribal taxes imposed on reservation mineral production. The combined state and tribal tax burden is substantial. It continues to increase. Because the states and the tribes exist as separate and often hostile taxing entities, amici curiae are not confident that each taxing entity will accomodate the legitimate interests of the other. An existing body of federal law, the Indian preemption case law, should be utilized by this Court to limit state taxes to only that level required to finance state services actually provided reservation mineral activity. These principles, embodied in recent decisions of this Court and described in this Brief, should be incorporated by this Court in its affirmance of the Ninth Circuit decision in this case.

I.

Overlapping State and Tribal Taxation is Unfair to Reservation Mineral Developers.

If this Court permits the western states to impose the full array of state mineral taxes on the reservations with-

out limiting the amount of the state taxes to only those taxes required to support specific state services provided on the reservations, companies such as amici curiae will be subject to overlapping/double taxation and will have been penalized for undertaking economic development activities on the reservations. As we shall next show, the problem of overlapping state and tribal taxation is creating for amici curiae an intolerable financial burden.[2] If not stopped, energy companies will, over time, leave the reservations to spend their development monies in off-reservation locations where the tax burdens are substantially lower.

The problem of overlapping/double state and tribal taxes is rapidly making the reservations uncompetitive. For example, the oil and gas activities of Cotton Petroleum Corporation and other amici curiae doing business on the Jicarilla Reservation are subject to five New Mexi-

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[2]The Amici Curiae Brief of New Mexico *et al.* contends that because this case technically only involves the question of Congress' authorization to Montana to tax the Blackfeet Tribe's royalty share of production, this Court need not consider the larger question of whether Congress has by statute authorized the full array of state mineral taxes on producers such as amici curiae. The states are wrong. Indeed the Petitioner, the State of Montana, concedes that if the Ninth Circuit decision is reversed, "all taxes on production will be permissible", *Brief for Petitioners*, p. 15, n.5. If this Court rules that indeed Congress' enactments of May 29, 1924 (codified at 25 U.S.C. § 398) and of March 3, 1927 (codified at 25 U.S.C. § 398c) provide the states with a blanket authorization to tax tribal royalty income, this Court will necessarily have construed the statutes to mean that Congress has granted the states the unlimited right to tax all Indian reservation mineral production and not simply the royalty share of such production. Hence Amici Curiae and all producers on the reservations have a vital interest in determining whether the states can continue to tax all reservation production even though the states have only minimal responsibilities on the reservations.

co taxes.[3] Those amici curiae doing business on the Jicarilla Indian Reservation in New Mexico are also subject to a substantial Jicarilla tribal tax of .05¢ per million British thermal units of gas and $.29 per barrel of crude oil.[4] During just five years, 1977-1982, the New Mexico taxes have generated approximately $35,000,000 from the Jicarilla Reservation alone.[5] As a result of these double taxes, oil and gas producers on the Jicarilla Reservation in New Mexico pay $3.00 to the State of New Mexico for every $1.00 they pay to the Jicarilla Apache Tribe.[6]

Coal producers doing business on the Navajo Indian Reservation in New Mexico face a similar overlapping double tax burden. Such coal producers must pay to the State of New Mexico and its counties a total of nine taxes arising out of surface coal mining activities on the Navajo Reservation.[7] These taxes, when combined, create an ag-

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[3]The five New Mexico taxes are: New Mexico Oil and Gas Severance Tax, N.M. Stat. Ann. (1978) § 7-29-1 *et seq.*; New Mexico Oil and Gas Conservation Tax, N.M. Stat. Ann. (1978) § 7-30-1 *et seq.*; New Mexico Oil and Gas Emergency School Tax, N.M. Stat. Ann. (1978) § 7-31-1 *et seq.*; New Mexico Oil and Gas Ad Valorem Production Tax, N.M. Stat. Ann. (1978) § 7-32-1 *et seq.*; and New Mexico Oil and Gas Production Equipment Ad Valorem Tax, N.M. Stat. Ann. (1978) § 7-34-1 *et seq.*

[4]*Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 136 (1982) (describing Jicarilla Apache tribal taxes).

[5]See unrebutted Affidavit of Christina Kirschner submitted in support of a memorandum of law in opposition to New Mexico motion for summary judgment, filed July 9, 1984 in *Cotton Petroleum Corp. et al. v. State of New Mexico, supra* p.2.

[6]*Id.*

[7]New Mexico Gross Receipts and Compensating Tax, N.M. Stat. Ann. (1978) § 7-9-1 *et seq.*; County Fire Protection Ex-

(Continued on next page)

gregate burden in excess of $25,000,000 on the 12 million tons of Navajo coal produced each year which are subject to New Mexico taxes. At the same time, the Navajo Tribe purports to impose a possessory interest tax measured by the valuation of the property rights under a lease granted by the Navajo Tribe and a business activity test measured by a percentage of the gross receipts received from the sale of the coal. If and when these two taxes are imposed on coal production on the Navajo Reservation now subject to the full array of New Mexico taxes, the Tribe will receive revenues which are approximately equal to the $25,000,000 in revenues now being derived by New Mexico. The legality of the Navajo tribal taxes is presently before this Court in *Kerr-McGee Corporation v. Navajo Tribe of Indians,* 731 F.2d 597 (9th Cir. 1984), *cert granted,* 105 S. Ct. 242 (1984).

Wintershall Oil and Gas Corporation has both a 93,000 acre lease and a 250,000 acre joint venture agreement with the Ute Mountain Ute Tribe on the Tribe's reservation located in New Mexico and Colorado. Wintershall oil and gas production occurring in New Mexico could be subject to the five New Mexico taxes summarized above as applicable on the Jicarilla Indian Reservation. Production on the Ute Mountain Ute Reservation within the geographical boundaries of the State of Colorado could be subject to State of Colorado property taxes and severance

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cise Tax, N.M. Stat. Ann. (1978) § 7-20A-1 *et seq.;* County Sales Tax, N.M. Stat. Ann. (1978) § 7-21-1 *et seq.;* New Mexico Resources Excise Tax, N.M. Stat. Ann. (1978) § 7-25-1 *et seq.;* New Mexico Severance Tax, N.M. Stat. Ann. (1978) § 7-26-1 *et seq.;* New Mexico Oil and Gas Conservation Tax, N.M. Stat. Ann. (1978) § 7-30-1 *et seq.;* New Mexico Property Taxes, N.M. Stat. Ann. (1978) § 7-35-1 *et seq.;* and New Mexico Income and Franchise Taxes N.M. Stat. Ann. (1978) § 7-2-1 *et seq.,* § 53-3-11 *et seq.*

taxes.[8] The combined impact of the Colorado taxes creates a tax burden which equals approximately 3% of the gross revenues derived from oil and gas production on the reservation. At the same time reservation oil and gas production is subject to a 5% tribal severance tax.

The pattern of overlapping/double state and tribal taxation which we have seen in New Mexico and Colorado occurs throughout the West. In Wyoming for example, Wind River Indian Reservation oil and gas production is subject to Wyoming property taxes and severance taxes which together approximate 12% of the value of production.[9] At the same time Wind River Reservation oil and gas production may be subject to a 4% tax imposed by the Shoshone and Arapahoe Tribes of the Wind River Reservation. The tribal tax is currently the subject of litigation which is awaiting a decision by this Court in *Kerr-McGee Corp. v. Navajo Indian Nation, supra,* p.7. *See Conoco Oil Inc. v. Shoshone and Arapahoe Tribes,* 569

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[8]Colo. Rev. Stat. (1973) § 39-5-101 *et seq.,* (1973) (property taxes); Colo. Rev. Stat. (1973) § 39-29-101 *et seq.* (1973) (severance taxes). Wintershall uses the phrase "could be" because a portion of the reservation oil and gas production is undertaken pursuant to a joint venture issued pursuant to the Indian Mineral Development Act of 1982, 25 U.S.C. § 2102 *et seq.* In that 1982 Act, Congress expressly instructed that mineral joint ventures created under the new legislation would not be subject to any pre-existing acts of Congress relating to mineral development on Indian lands. 25 U.S.C. § 2105. Hence any state taxation which might be applied to such joint venture mineral production would be imposed not on the basis of any express congressional authorization, but rather on the basis of the federal/Indian preemption principles discussed in this Amici Curiae Brief.

[9]See Wyo. Stat. (1977) §§ 39-6-302; 39-2-202.

F. Supp. 801 (D. Wyo. 1983), *appeal docketed,* Nos. 83-2243, 83-2255 (10th Cir. Sept. 22, 1983, Sept. 28, 1983).

The amount of money derived from these overlapping/double tribal and state taxes is substantial. For example in a case on remand involving overlapping state and tribal taxes, the District Court of Montana will shortly decide whether $55,000,000 in severance and gross proceeds taxes paid to the State of Montana from the production and sale of Crow Indian coal should be paid to the Crow Tribe, which during the relevant period of time received slightly over $14,000,000 in coal royalties. *Crow Tribe of Indians v. Montana,* 469 F. Supp. 154 (D. Mont. 1979), *rev'd,* 650 F.2d 1104 (9th Cir. 1981), *amended,* 665 F.2d 1390 (9th Cir.), *cert. denied,* 459 U.S. 916 (1982). It is apparent from this brief survey of reservation mineral production that companies doing business on the Indian reservations in the West are paying millions of tax dollars to the states and ever increasing amounts of tribal taxes to the Tribes. If this Court does not act in the present case and in *Kerr-McGee Corporation v. Navajo Indian Nation, supra* p.7 to assure that the combined burden of taxes on the reservation is equivalent to the mineral tax burden off the reservations, the mineral industry will over time leave the reservations to undertake mineral production elsewhere.

II.

Permitting Overlapping/Double Tribal and State and Tribal Taxes is not Justified Given The States' Minimal Responsibilities On the Reservations.

Congress, which created and maintains the western Indian reservations, and the western state legislatures, which enact state mineral taxes and direct where those tax

revenues are to be spent, have consistently minimized the expenditure of state revenues on the reservations. As a result, this Court should not permit states to enact overlapping taxes, to generate substanial revenues from the reservations, and then to spend those revenues elsewhere. Indeed, to permit this taxing and spending pattern to continue raises the likelihood of a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See Zobel v. Williams,* 457 U.S. 55 (1982) (the unequal distribution of state tax revenues violates the Equal Protection Clause).

In our judgment, it is essential that this Court create a mineral taxing policy for the reservations which does not fundamentally undermine what this Court has previously stated as the federal purpose of establishing the reservations—namely to provide the Indians with a permanent means of livelihood—the right to use the lands, the minerals, fish game, wild plants, and waters of the reservation for their self-support. *See, e.g., Menominee Tribe v. United States,* 391 U.S. 404 (1968); *Squire v. Capoeman,* 351 U.S. 1 (1956); *Alaska Pacific Fisheries v. United States,* 248 U.S. 78 (1918); *Winters v. United States,* 207 U.S. 564 (1908); *United States v. Winans,* 198 U.S. 371 (1905). This Court has confirmed that the federal purpose in establishing the reservations in the first place was to permit the Indians to earn a livelihood free of disruption from non-Indians on the reduced holdings created when larger portions of Indian lands were ceded, through the use of farming, raising livestock, timber, and mineral development. *Winters v. United States,* 207 U.S. at 576-77; *United States v. Rickert,* 188 U.S. 432, 443-44 (1903).

This Court has not only recognized the federal policy of preserving the reservations as a permanent Indian homeland, but also has long recognized that the states do not legislate for or expend substantial state revenues on the reservation:

> Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities.
>
> . . . And since federal legislation has left the State with no duty or responsibilities respecting the reservation Indians, we cannot believe that Congress intended to leave to the State the privilege of levying this tax.

Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685, 690-691 (1965) (citation omitted).

In recent years the Court has confirmed on numerous occasions that it is the federal and tribal governments and not the state governments which have the financial and legal responsibility for enhancing the economic development of the reservations. *See, e.g., New Mexico v. Mescalero Apache Tribe*, 103 S. Ct. 2378 (1983); *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832 (1982); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982); and *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

Each of these cases (except for *Merrion v. Jicarilla Apache Tribe*), resulted in a decision by this Court prohibiting the imposition of overlapping state taxes on reservation activity, because in each case the states could not establish the requisite state interest or responsibility on

the reservation to justify the extraction of substantial state revenues. In *White Mountain Apache Tribe,* this Court prevented Arizona state taxation because the taxes were not "assess[ed] in return for governmental functions it performs for those on whom the taxes fall". 448 U.S. at 150. This Court concluded that Arizona's general desire to raise revenue was not sufficient, because the Court was "unable to discern a responsibility or service that justifies the assertion of taxes imposed for on-reservation operations conducted solely on tribal and Bureau of Indian Affairs roads." 448 U.S. at 150.[10] Similarly, in *Ramah,* after finding that the federal government's direction and supervision of the construction of Indian schools left no room for the additional responsibilities and burdens of the state tax, this Court noted: "This case would be different if the State were actively seeking tax revenues for the purpose of constructing, or assisting in the effort to provide, adequate educational facilities for Ramah Navajo children." 458 U.S. at 843 n.7. The fact that New Mexico provided services to the non-Indian construction company in connection with its off-reservation activities was deemed to be irrelevant. 458 U.S. at 844 (" . . . we fail to see how these benefits can justify a tax imposed on the construction of school facilities on *tribal* lands" . . . (emphasis in original)).

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[10]The Amici Curiae Brief of New Mexico *et al.*, p. 19, misleads this Court when it restates *White Mountain Apache Tribe* to imply that this Court has already acknowledged that state taxation of reservation mineral production is justified because of state services provided on the reservations in response to reservation mineral development. To the contrary, the States provide at best minimal mineral development related services. *See infra,* p. 14 (for a discusssion of mineral related state services provided the reservations).

Finally in *New Mexico v. Mescalero Apache Tribe, supra* p.10 (involving the efforts of New Mexico to impose fees on a hunting and fishing program financed and administered on tribal lands by the Mescalero Apache Tribe), the Court emphasized the need for the states to demonstrate that their taxes imposed on the reservation are required to support reservation services:

> The exercise of state authority which imposes additional burdens on a tribal enterprise must ordinarily be justified by functions or services performed by the State in connection with the on-reservation activity (citation omitted). Thus a State seeking to impose a tax on a transaction between a Tribe and nonmembers must point to more than its general interest in raising revenues . . . .

103 S. Ct. at 2387.

In applying this rule and preventing New Mexico from imposing its fees, this Court concluded, "New Mexico does not contribute in any significant respect to the maintenance of these [fish and wildlife] resources, and can point to no other 'governmental functions it provides' . . . in connection with hunting and fishing on the reservation by nonmembers that would justify the assertion of its authority." 103 S. Ct. at 2390.

These cases confirm that only in unusual circumstances will overlapping/double tribal and state taxation be permitted on the reservations—namely under those statistically rare circumstances where a state can point to a specific responsibility on the reservation which requires the expenditure of substantial state revenues. While there exists no fully developed court record showing the presence or absence of state involvement in reservation mineral development, the available data suggests that,

indeed, state responsibility for reservation mineral and oil and gas development is typically as non-existent as this Court has found state responsibility for reservation forestry, *White Mountain Apache, supra* p.10, reservation school construction *Ramah Navajo School Board, supra* p.10, and reservation hunting and fishing *New Mexico v. Mescalero Apache Tribe, supra* p.10.[11] Furthermore, a review of the western state oil and gas and coal tax statutes will demonstrate that in most cases substantial portions of the revenues generated from such taxes are either placed in segregated funds, often held in specifically created legislative trusts, to pursue itemized state priorities (such as education and water resources) or are distributed for use by state and local subdivisions for energy impact projects, virtually all of which are located off the reservations.[12] Companies such as amici curiae are therefore subject to two injustices as a result of the present taxing pattern. First, they are subject to double taxation imposed by two separate, unrelated, and often hostile taxing entities, and secord, they rarely, if at all, receive the benefits of the state government programs financed through their tax payments.

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[11]See unrebutted Affidavit of Christina Kirschner filed July 9, 1984 in *Cotton Petroleum Corp. et al. v. State of New Mexico*, Consolidated Nos. SF82-2081(C) and 82-2302(C), Santa Fe District Court, New Mexico which confirms that at least in New Mexico state services dealing with mineral development on the Jicarilla Apache Reservation are indeed minimal.

[12]See, e.g., Colo. Rev. Stat. (1973) §§ 32-29-108, 39-29-110; Mont. Code Ann. (1983) § 15-1-501; N.M. Stat. Ann. (1978), § 7-17-5 *et seq.*; Wyo. Stat. (1977), § 9-4-204(n) (for disposition of tax proceeds in the various states); *See also Crow Tribe of Indians v. Montana*, 650 F.2d at 1108.

III.

Existing Principles of Federal Law Protect Amici Curiae From Overlapping State/Tribal Double Taxation.

If this Court follows its decision in *Merrion v. Jicarilla Apache Tribe, supra* note 4, at p.5 (that the Tribes with the approval of the Secretary of the Interior have the power to impose mineral development taxes on reservation mineral development) with a decision in this case that Congress has indeed given the states a blank check to impose their full array of state mineral taxes on the reservations (regardless of whether the states have any responsibility for mineral development on the reservations justifying substantial taxes), amici and reservation mineral developers generally will be subject to overlapping/double tribal and state mineral taxes causing reservation mineral development to become increasingly uncompetitive. We believe that there exists ample authority to reconcile the competing tribal/state interests and to prevent unjustified and injurious overlapping/double taxation. This Court has already acknowledged that under contemporary federal supremacy law, states may tax or regulate Indian related activities where non-Indians are involved when there is a showing of a sufficient state interest. *See generally White Mountain Apache Tribe v. Bracker,* 448 U.S. at 144-45. Determination of whether a sufficient state interest exists calls for a "particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *White Mountain Apache Tribe v. Bracker, Id.* at 145 (citations omitted). As this Court implied in *White*

Mountain, state taxes may be assessed in those situations where they are imposed "in return for governmental functions it performs for those on whom the taxes fall." *Id.* at 150. *See also Ramah Navajo School Board v. Bureau of Revenue,* 458 U.S. at 843 n.7 (1982) ("This case would be different if the State were actively seeking tax revenues for the purpose of constructing, or assisting in the effort to provide, adequate educational facilities for Ramah Navajo children").

Furthermore, establishing a limited right of state taxation dependent upon a particularized inquiry into the level of state services is also wholly consistent with decisions of this Court prohibiting the imposition of overlapping taxes under the Commerce Clause. *See, e.g., Merrion v. Jicarilla Apache Tribe,* 455 U.S. at 158 n.26 (1982); *Evco v. Jones,* 409 U.S. 91 (1972).

Amici believe that if the Court were to apply these principles of federal preemption and Commerce Clause multiple burden to the problem of tribal and state overlapping/double taxation of reservation mineral development, the states would be able to impose their taxes only when necessary to support specific state services on the reservations, and only in an amount such that the state taxes when considered side by side with appropriate and lawful tribal taxes would not create a tax burden on the reservations which is in excess of the tax burden found off the reservations.[13]

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[13]An additional fact exists to confirm that Congress did not intend that the states' open ended taxing authority contained in the Act of May 29, 1924 (codified at 25 U.S.C. § 398) and in

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CONCLUSION

Reservation mineral development for many tribes remains today the most important reservation revenue source. In the name of protecting what are after all frail reservation economics and in the interest of fairness to companies such as amici curiae who are rapidly seeing the overlapping/double reservation tax burden become intolerable, this Court should review side by side the power of the tribes to tax, considered in *Kerr-McGee v. Navajo Indian Nation, supra* p.7, and the power of the states to impose their full array of state mineral taxes on the reservations in this case. In this review the Court should uphold the decision of the Ninth Circuit, limit state taxes to those statistically rare situations where the states require reservation tax revenues to finance state services actually provided reservation mineral development, and

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the Act of March 3, 1927 (codified at 25 U.S.C. § 398c) was to carry over to leases issued under the Act of May 11, 1938 (codified at 25 U.S.C. § 396a-f.) In 25 U.S.C. § 396d Congress instructed the Secretary of the Interior to issue rules and regulations controlling operations under oil and gas leases issued pursuant to the terms of "sections 396a to 396g of this title or any other Act affecting restricted Indian lands". In 1938 the Secretary issued rules and regulations under 25 U.S.C. § 396d which incorporated a provision of the Act of May 29, 1924 authorizing the Secretary to amend leases with the approval of the operator and the tribal lessor, but the Secretary in his regulations did not incorporate those provisions of the very same 1924 Act which authorized state taxation. 25 C.F.R. §§ 186.26, 186.30 (Form 5-157g—Stipulation) (1938). In our view the contents of the contemporaneous regulations confirm that by 1938, Congress and the Secretary understood that reservation economic development could not be pursued if the states were permitted to impose the full array of state taxes on the reservations without regard to the presence or absence of state services or the presence of tribal taxes and fees.

assure that the aggregate tax burden on the reservations, created by two independent and often hostile taxing entities, does not create an overall tax burden which is in excess of that found off the reservations.

Date: December 19, 1984

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